

**MINUTES**  
**ZONING BOARD OF APPEALS**  
**JUNE 1, 2009**

The meeting was held at Stow Town Building and was opened at 7:30 p.m. Board members present were John Clayton, Edmund Tarnuzzer, Michele Shoemaker, Charles Barney (associate) and Bruce Fletcher (associate).

Others present were Kathleen Willis, chair of the Planning Board; Stephen Quinn of the Planning Board; Michael Busch and Eric Bachtell of the Recreation Commission; and Leonard Golder, abutter to the recreational field to be created off Old Bolton Road.

**Stow Recreation** - Ms. Shoemaker chaired as she had the public hearing on May 11th on the petition for variance under Section 7.7.4.1 of the Zoning Bylaw to allow elimination of a fence and plantings as screening for the parking area and along the street frontage.

The bylaw concerning off-street parking requires opaque screening, but the Planning Board site plan approval requires a six-foot high stockade fence. Ms. Shoemaker suggested plantings along the front property line in staggered fashion. From the street there would appear to be solid screening, but not from a sideways view. She commented that plan would be in compliance with the bylaw and not require a variance.

Ms. Willis of the Planning Board pointed out that the Police Safety Officer Timothy Lima does not want anything higher than four feet. The bylaw requires "a height of at least six (6) feet with intermittent visual obstruction to a height of at least twenty (20) feet". Ernest Dodd of the Planning Board had shown Sgt. Lima a sketch of proposed staggered plantings interspersed with fence sections placed diagonally, but he was not in agreement. Apparently there is no case law related to a similar issue of fencing and public safety. Ms. Willis said that abutters had felt a fence would tend to block field noise. Ms. Shoemaker suggested that plantings would probably absorb such. Ms. Willis advised there are plants/shrubs that attain different heights at maturity, but will require some attention even if minimally.

Mr. Golder agreed that one had to live with certain issues of public safety and that fencing and shrubbery would aid that. He felt the biggest problem after dark was the possibility of young people at the rear of the property doing whatever. That calls for on-site law enforcement. A drive-by by a police vehicle will not satisfy that. Rather, there should be patrol of the field. Mr. Golder favored a fence to serve as a noise barrier. He was reminded there could be hiding places behind a fence for those with criminal intent. Mr. Golder did not believe there should be fencing or screening the entire width of the property. The police vehicle could be driven from one side of the property and out the other.

To clarify, Mr. Fletcher said that the issue is separation of the parking area from the street, and not the playing area from the street. There will be two separate openings. An attempt should be made to comply with the bylaw with a mix of shrubs and trees. As many existing trees as possible should be kept. He noted that sound attenuation is not the intent of Section 7.4.4.1.

Screening does not necessarily mean a fence, and that is up to the Planning Board to determine, not this board. Mr. Clayton pointed out there are alternatives to a fence from which the variance was requested. The request was that the entire fence be removed from the plan, and that is up to the Planning Board that has site plan approval.

Ms. Willis noted that the Safety Officer had not attended the Planning Board's hearing on site plan approval. He came forward only after the decision was rendered. Modification of the site plan approval will probably require a new public hearing to reconsider the matter of a fence. She suggested the Board of Appeals grant the requested variance and then allow the Planning Board to reconsider its site plan approval.

Michael Busch of the Recreation Commission pointed out the existence of a four-foot high stone wall along the front of the property. The intent is to depend on neighbors to keep an eye on the site. The Safety Officer has advised there are sex offenders in the area, and someone could hide behind a fence to watch people on the fields. He did not believe that a fence would serve as a sound barrier. Eric Bachtell said this will be a park to be used by people seven days a week and it should be a view from the street.

Mr. Tarnuzzer felt this board can act on the sentence "...screen shall be opaque from the ground to a height of at least six (6) feet...", but not on, "...opaque screening must be opaque in all seasons of the year."

Mr. Golder said there is a public safety issue related to opaque screening and other people being able to police this, and he as an abutter will be interested in what is going on there. A fence is a crime deterrent as well as a noise barrier. Ms. Shoemaker again reminded this board can act only on what was requested. This concerns visual screening.

Mr. Tarnuzzer moved to grant a variance from the requirement of Section 7.7.4.1., that screening should be opaque from the ground to a height of six (6) feet with intermittent visual obstruction to a height of at least twenty (20) feet. Second by Mr. Barney. The vote was unanimous in favor of the motion. It was suggested there be the condition that the Planning Board site plan approval be modified to allow screening as it feels appropriate to meet the intent of the bylaw. There could still be intermittent sight obstructions with plantings of variable heights. Mr. Busch noted there are existing tall trees that will tend to shade plantings along the inside of the wall.

Ms. Shoemaker was to draft a decision for review and approval by the Board members. The meeting was adjourned at 8:45 p.m.

Respectfully submitted,  
Catherine A. Desmond  
Secretary to the Board